IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 86 of 2005

HARI KISHAN
V/S
AKHIL B.B.SABHA

Mr. RAJESH PANWAR, for the appellant / petitioner

Date of Order : 21.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, perused the impugned judgments.

The learned Courts below have decreed the plaintiff's suit for eviction on the ground of reasonable and bonafide necessity of the plaintiff, as the plaintiff wants to set up an old age home in the suit premises. Both the learned Courts below have decided issues no.1, 3, and 4 relating to reasonable and bonafide necessity, comparative hardship and partial eviction in favour of the plaintiff.

It has been found by the learned trial Court that the property has come to the plaintiff by way of donation by one Deendayal, and it has been found that it is not in dispute that the property is to be used for the purpose of welfare of the old age people, including widows for their rehabilitation, and that the appellant himself is also member of this society itself, and that a resolution in this regard had been adopted in the year 1992 by the society, being Ex.3 dated 16.8.92 for the purpose of fulfillment of the aims of the society. It has also been found that it cannot be said that the requirement is a suddenly created one, nor can it be said to be not reasonable. It was noticed, that a suggestion was given that old age asylum can be established by taking land on rent, but then it has been found that when the plaintiff has its own property, the tenant cannot dictate him. With this, the question of comparative hardship has been decided by holding that in view of the fact that the requirement is of public interest, the

inconvenience that would be suffered by the tenant would be only one, which is natural consequence of eviction. Likewise, it has also been found that if a partial eviction is ordered, it would not fulfill the requirement of the plaintiff.

These findings of the trial Court have been affirmed by the learned Lower Appellate Court. All these findings are pure findings of fact, and are not shown to be vitiated on any of the grounds available under Section 100 CPC.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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